

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES CONTANT, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA
CORPORATION, *et al.*,

Defendants.

No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**DECLARATION OF R. BRYANT MCCULLEY ON BEHALF OF MCCULLEY
MCCLUER IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND
INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

I, R. Bryant McCulley, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief:

1. I am a partner of the law firm of McCulley McCluer PLLC, and my firm serves as attorneys of record for Plaintiffs in this matter and Class Counsel along with Berger Montague PC; Peiffer Wolf Carr Kane & Conway, APLC; and Schneider Wallace Cottrell Konecky LLP.

2. I submit this declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards for Class Representatives regarding the services rendered, and costs and expenses incurred ("Fee Motion"), in *Contant, et al. v. Bank of America Corp., et al.*, Case No. 17-cv-3139-LGS (the "Action").

3. McCulley McCluer has served as class counsel and counsel for class representatives in numerous class actions and has assisted in securing in excess of \$1 billion in

complex litigation. The firm's resume is attached hereto as Exhibit O to the Declaration of Michael Dell'Angelo in Support of the Fee Motion. Because of its size as a boutique law firm, the firm routinely co-counsels with larger firms such as Berger Montague to pursue complex actions on behalf of its clients. In doing so, the firm has been instrumental in originating and successfully prosecuting meritorious claims that—but for the firm's efforts—likely would not have been brought.

4. This case is no different. My firm has been actively involved in all aspects of this litigation from its development, litigation, and ultimate resolution.

5. I incorporate herein by reference the Declaration of Michael Dell'Angelo in Support of the Fee Motion, filed contemporaneously herewith, which details the case origin, history, and significant time spent and expenses incurred by Class Counsel in the prosecution of this case to a successful resolution.

6. I actively participated and oversaw my firm's substantive involvement in this Action. My firm performed substantial services on this matter by working with our co-counsel and actively participating in every aspect of this litigation including the following: formulating the initial case concept, strategy, and damages theories; conducting factual and legal research to support the underlying claims; assisting with drafting and editing the class action complaints; researching and briefing motions, including Defendants' potentially dispositive Rule 12(b)(2) and 12(b)(6) motions; facilitating the review and production of thousands of pages of Plaintiffs' documents and data; preparing written discovery requests of parties and non-parties; reviewing transactional data produced by Defendants and third parties; attending telephonically several depositions noticed in the *FOREX* action; preparing for and defending in person three depositions of named plaintiffs in this action; consulting with experts on numerous aspects of

this litigation, including merits and damages issues; and participating in several rounds of settlement discussions with Defendants.

7. The schedule below in this paragraph sets forth my firm's total hours and lodestar, computed at current rates, for the period from inception of the case investigation through and including September 15, 2020. The hourly rates for the attorneys and professional staff in my firm reflected in the chart below are the usual and customary rates currently charged by my firm in similar complex litigation matters. The total numbers of hours spent by my firm during this period was 2,679 with a corresponding lodestar (at current rates) of \$1,705,440.00. This schedule was prepared from time records prepared and maintained by my firm in the ordinary course of business:

Name	Position	Hours	Rate	Lodestar
R. Bryant McCulley	Member	879.6	\$775.00	\$681,690.00
Stuart H. McCluer	Member	351.4	\$750.00	\$263,550.00
Frank B. Ulmer	Counsel	1,448	\$525.00	\$760,200.00
Total		2,679.0		\$1,705,440.00

8. In addition, my firm has advanced certain costs of litigation in this matter, both with respect to its own costs as well as payment of assessments to a common fund to which all Plaintiffs' counsel in this Class case were asked to contribute. Whenever such contributions were requested, my firm timely advanced such expenses on behalf of Plaintiffs and the Class.

9. My firm recorded these expenses as they were incurred, and they are reflected in its records that were created from invoices, receipts, and other proofs of the charges and payments.

10. My firm has expended a total of \$227,620.46 in unreimbursed costs and expenses in connection with the prosecution of this Action from inception of the case through and

including September 15, 2020. These costs are set forth below, were incurred on behalf of Plaintiffs and the Classes by my firm, and have not been reimbursed:


Category	Amount
Litigation Fund	\$198,775.60
Court Fees (filing fees, etc.)	\$644.00
Copy/Postage/Legal Research	\$2,107.82
Transportation	\$2,229.09
Lodging	\$2,658.69
Meals	\$1,011.16
Experts and Consulting	\$20,194.10
Total	\$227,620.46

11. My firm has expended and will continue to expend additional hours—which are not included in the lodestar cross-check calculations set forth above—in connection with representing the Plaintiffs and assisting in the Settlement administration process, including responding to Plaintiff inquiries and preparing for the final approval hearing.

12. McCulley McCluer has represented the Settlement Classes on a contingent fee basis. Since inception of this matter over three years ago, McCulley McCluer has not received any fees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of September 2020.


 R. Bryant McCulley
 McCulley McCluer PLLC